

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)	
)	Cr. No. 6:00-330-HMH
vs.)	
)	OPINION & ORDER
Freddy Ramirez,)	
)	
Movant.)	

This matter is before the court on Freddy Ramirez’s (“Ramirez”) pro se motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Ramirez previously filed a § 2255 motion on January 13, 2003. See 6:03-130-HMH. On June 13, 2003, the court summarily dismissed Ramirez’s prior motion. The United States Court of Appeals for the Fourth Circuit vacated and remanded the case on April 11, 2005. After a hearing, the court orally denied Ramirez’s prior motion on August 15, 2005. The Fourth Circuit subsequently denied a certificate of appealability and dismissed Ramirez’s appeal on March 27, 2006. United States v. Ramirez, No. 05-7608, 2006 WL 774930 at *1 (4th Cir. Mar. 27, 2006) (unpublished). Ramirez filed the instant § 2255 motion on January 3, 2010.¹

The instant § 2255 motion is therefore Ramirez’s second. “[A] prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of appeals.” United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003) (citing 28 U.S.C. § 2244(b)(3)); see also 28 U.S.C. § 2255 (“A second or successive motion [under this section] must be certified as provided in section 2244 by a panel of the appropriate

¹ Houston v. Lack, 487 U.S. 266 (1988).

court of appeals”). In the absence of pre-filing authorization, the district court lacks jurisdiction to consider the instant § 2255 motion. See Winestock, 340 F.3d at 205.

Ramirez has not obtained authorization from the appropriate United States Court of Appeals to proceed with a second or successive § 2255 motion. Because the court lacks jurisdiction over this successive § 2255 motion, it must be dismissed.

Therefore, it is

ORDERED that Ramirez’s § 2255 motion, docket number 66, is dismissed. It is further

ORDERED that a certificate of appealability is denied because Ramirez has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
January 12, 2010

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.